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Twenty-sixth meeting of chairpersons of the human rights treaty bodies
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Follow-up to General Assembly resolution 68/268 on strengthening and enhancing the effective functioning of the human rights treaty body system and to the decisions of the twenty-fifth meeting of chairpersons of the human rights treaty bodies pertaining to the harmonization of working methods

Concluding observations

Note by the secretariat

Summary

The General Assembly, in its resolution 68/268 on strengthening and enhancing the effective functioning of the human rights treaty body system, encouraged the treaty bodies, inter alia, to adopt short, focused and concrete concluding observations, including the recommendations therein, that reflected the dialogue with the relevant State party, and to that end further encouraged them to develop common guidelines for the elaboration of such concluding observations, bearing in mind the specificity of the respective committees and of their mandates, as well as the views of States parties. The chairpersons, at their twenty-fifth meeting, also recommended that the possibility of a common format for concluding observations be discussed at their twenty-sixth meeting in June 2014 (A/68/334, para. 45).

The present note by the secretariat contains an overview of previous discussions on the subject and of existing treaty body practices with respect to concluding observations. The secretariat further suggests elements for endorsement by the chairpersons, based on good practices identified and the contents of General Assembly resolution 68/268.

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I. Introduction

1. The General Assembly, in its resolution 68/268 on strengthening and enhancing the effective functioning of the human rights treaty body system, "encourages the human rights treaty bodies, with a view to accelerating the harmonization of the treaty body system, to continue to enhance the role of their Chairs in relation to procedural matters, including with respect to formulating conclusions on issues related to working methods and procedural matters, promptly generalizing good practices and methodologies among all treaty bodies, ensuring coherence across the treaty bodies and standardizing working methods".

2. In the same resolution, the General Assembly recognized "the important, valuable and unique role and contribution of each of the human rights treaty bodies in the promotion and protection of human rights and fundamental freedoms, including through their examination of the progress made by States parties to the respective human rights treaties in fulfilling their relevant obligations and their provision of recommendations to States parties on the implementation of such treaties". It also recognized "the importance of continued efforts to improve the efficiency of the working methods of the human rights treaty body system". Further, the Assembly emphasized "that strengthening and enhancing the effective functioning of the human rights treaty body system is a common goal shared by stakeholders who have different legal competencies in accordance with the Charter of the United Nations and international human rights instruments establishing treaty bodies", and recognized in that regard "the ongoing efforts of different treaty bodies towards strengthening and enhancing their effective functioning".

3. In the light of the above, the General Assembly "encourages the human rights treaty bodies to adopt short, focused and concrete concluding observations, including the recommendations therein, that reflect the dialogue with the relevant State party, and to this end further encourages them to develop common guidelines for the elaboration of such concluding observations, bearing in mind the specificity of the respective committees and of their mandates, as well as the views of States parties".

4. At the twenty-fifth meeting of chairpersons of the human rights treaty bodies, the chairpersons recommended that their twenty-sixth meeting include a discussion of the possibility of a common format for concluding observations (titles, length, number of recommendations) (A/68/334, para. 45). The present note is submitted pursuant to that recommendation and General Assembly resolution 68/268.

5. The State party review by the treaty bodies consists of four components which build on one another: the submission by the State party of its initial or periodic report; the constructive dialogue between the State party and the committee; the concluding observations; and the follow-up to those observations. The State party review forms a continuum and each cycle builds on the preceding one. Hence, the present note by the secretariat should be read in conjunction with the notes by the secretariat on the simplified reporting procedure (HRI/MC/2014/4) and on the constructive dialogue (HRI/MC/2014/3).

6. Nine treaty bodies (the Human Rights Committee, the Committee on Economic, Social and Cultural Rights, the Committee on the Elimination of Racial Discrimination, the Committee on the Elimination of Discrimination against Women, the Committee against Torture, the Committee on the Rights of the Child, the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Committee on the Rights of Persons with Disabilities and the Committee on Enforced Disappearances) formulate concluding observations following the consideration of reports from States parties. In general, the concluding observations are structured as follows: (a) introduction; (b) positive aspects; (c) principal areas of concern; and (d) recommendations. The main

objective of the concluding observations is to identify, in a constructive manner, the achievements as well as the problems and challenges related to the protection of human rights, as defined in the treaty, in the State party and to assist the State party in addressing problems and challenges by providing recommendations for action.

7. Concluding observations are fundamental tools for State parties to use in complying with their treaty obligations. A State party, in its periodic report to a treaty body, should inform that treaty body about the measures it has undertaken to implement the previous concluding observations. It is therefore of paramount importance that the concerns and recommendations in the concluding observations are concise, concrete and tailored to the specific situation facing the State party that they address. The accuracy and quality of the recommendations of treaty bodies are determining factors in their usefulness to States and stakeholders to promote improvements at the national level.

8. While there has been convergence among the concluding observations of treaty bodies in recent years, treaty bodies maintain different practices in a number of areas with respect to concluding observations. In the present note, the secretariat provides an overview of previous discussions and recommendations on concluding observations. It also describes the working methods of individual treaty bodies with respect to the concluding observations as they stood at the time of drafting of this report (March 2014), covering the practices of all treaty bodies that are mandated to receive and consider reports submitted by States parties. In the last part of the note, elements for aligning concluding observations are suggested for endorsement by the chairpersons, based on good practices identified and the contents of General Assembly resolution 68/268.

II. Background

9. The alignment of the concluding observations of the treaty bodies has been examined in a number of meetings and United Nations documents.

10. In 2011, the chairpersons, at their twenty-third annual meeting, adopted the following points of agreement regarding concluding observations (A/66/175, para. 4):

(a) **Follow-up to previous recommendations**. With regard to periodic reports, previous concerns and recommendations should be the point of departure for the new concluding observations so as to ensure a clear assessment of the progress made by the State party since the previous review. Concerns and recommendations that have not been addressed would therefore be reiterated, while new concerns relating to more recent developments should also be included;

(b) **Suggested format for recommendations in concluding observations**. Treaty bodies are encouraged to produce focused recommendations, to limit the length of paragraphs and the number of subparagraphs by focusing on the main areas of concern and, if appropriate, to use subject headings. To that end, treaty bodies are encouraged to draft concluding observations using a clear format in which:

(i) Each paragraph addresses no more than three issues;

(ii) The concern is expressed in a maximum of three sentences;

(iii) The recommendation consists of an introductory sentence, if applicable, and up to three recommendations matching the order of the concerns, organized in sequentially lettered subparagraphs;

(iv) The recommendation could refer to relevant provisions of the treaty as well as to general comments/recommendations.

(c) **Standard paragraphs in concluding observations**. Individual treaty bodies were invited to discuss whether all standard paragraphs should be maintained or whether their use should be restricted to a specific country context, in cases deemed to be relevant and applicable;

(d) **Targeted recommendations in concluding observations**. All treaty bodies should carefully review the wording used when drafting recommendations so as to make their concluding observations more country-specific and targeted;

(e) **Section on factors and difficulties in concluding observations**. Treaty bodies should be cautious about including a section on factors and difficulties affecting the implementation of the convention/treaty by the State party. It has been noted that some treaty bodies that had such a section have subsequently abolished it;

(f) **Cross-referencing**. Treaty bodies should, in line with a previous recommendation, make cross-references to and repeat the recommendations of other treaty bodies and special procedures mandate holders, where appropriate.

11. In its resolution 68/268, the General Assembly "encourages the human rights treaty bodies to adopt short, focused and concrete concluding observations, including the recommendations therein, that reflect the dialogue with the relevant State party, and to this end further encourages them to develop common guidelines for the elaboration of such concluding observations, bearing in mind the specificity of the respective committees and of their mandates, as well as the views of States parties".

12. The Dublin II outcome document[1] contained recommendations regarding the concluding observations which formed the basis for recommendations included in the report of the United Nations High Commissioner for Human Rights on the strengthening of the human rights treaty bodies (A/66/860). In particular, the High Commissioner recommended that treaty bodies:

(a) Adopt a common format for the drafting of concluding observations and include titles (subject headings) therein;

(b) Reduce the length of their concluding observations in order to achieve greater efficiency and impact. The word limit for in-session translations (3,300 words/six pages) could be used as guidance, taking into account the number of substantive provisions and the scope of each treaty concerned;

(c) Ensure that the reporting cycle focuses on priority issues in the State under review, that concluding observations are country specific and targeted and that previous concluding observations are the point of departure of each new reporting cycle. In addition, the concluding observations should reflect the issues raised by the treaty body concerned during the constructive dialogue;

(d) Avoid, when formulating concluding observations, recommendations of a general nature, the implementation of which cannot be measured and, instead, give concrete guidance about the steps that need to be taken to implement treaty obligations. Recommendations that call for structural change, including in national legislation in order to bring it into line with the provisions of the relevant treaty, should be made systematically;

(e) When possible, divide concluding observations between immediate and longer term priority issues, based on a balance between urgency and the feasibility of addressing the different issues within any given reporting cycle;

[1] Available from http://www2.ohchr.org/english/bodies/HRTD/docs/DublinII_Outcome_Document.pdf.

(f) If a particular treaty provision or standard has not been respected, specify the articles in question for greater clarity;

(g) Ensure that recommendations of a programmatic nature or requiring positive steps by the State party include suggested indicators by which to measure achievement;

(h) Use, when deemed relevant, cross-referencing and reinforcement of the recommendations of other treaty bodies, the universal periodic review and special procedures mandate holders.

III. Existing treaty body practices as regards concluding observations

13. In this section, treaty body practices are analysed in the context of the recommendations endorsed by the chairpersons of treaty bodies at their twenty-second and twenty-third meetings.

A. Follow-up to previous concluding observations

14. At their twenty-third meeting, the chairpersons endorsed the recommendation that previous concerns and recommendations should be the point of departure for the new concluding observations so as to ensure a clear assessment of the progress made by the State party since the previous review. It also supported the recommendation that concerns and recommendations that have not been implemented should therefore be reiterated, and that new concerns relating to more recent developments should also be included (A/66/175, annex II, para. 25).

15. To various degrees, all treaty bodies take into account their previous concerns and recommendations as the basis for the next concluding observations.

B. Concluding observations reflecting the constructive dialogue

16. In its resolution 68/268, the General Assembly encouraged the treaty bodies to reflect in their concluding observations the constructive dialogue with the State party.

17. Seven of the nine treaty bodies that adopt concluding observations limit the issues reflected in the concluding observations to the content raised during the oral constructive dialogue with the State party. The Committee on Economic, Social and Cultural Rights and the Committee on the Rights of the Child also reflect elements which may not have been raised during the oral constructive dialogue, based on State party replies to the list of issues.

C. Prioritizing concerns and recommendations

18. The High Commissioner recommended that, where possible, concluding observations should be divided between immediate and longer term priority issues, based on a balance between urgency and the feasibility of addressing different issues within any given reporting cycle (A/66/860, sect. 4.2.6).

19. Four treaty bodies (the Human Rights Committee, the Committee on the Elimination of Racial Discrimination, the Committee on the Elimination of Discrimination against Women and the Committee against Torture) prioritize their recommendations in the context of their follow-up procedure.

D. Length of concluding observations

20. At their twenty-second meeting, the chairpersons endorsed the recommendation that each treaty body should explore ways of reducing the length of its concluding observations (A/65/190, annex II, para. 23). The recommendation highlighted the need for concluding observations to be as precise as possible while ensuring their high quality and the full exercise of the mandate of the treaty bodies in monitoring the implementation of all rights enshrined in their respective conventions. The High Commissioner further suggested using the word limit for in-session translation (3,300 words/six pages) as guidance (A/66/860, sect. 4.2.6).

21. The concluding observations of five (the Human Rights Committee, the Committee on the Elimination of Racial Discrimination, the Committee on Migrant Workers, the Committee on the Rights of Persons with Disabilities and the Committee on Enforced Disappearances) out of nine treaty bodies are 3,300 words or less. The concluding observations of the Committee on Economic, Social and Cultural Rights are, on average, about 4,000 words and those of the Committee on the Elimination of Discrimination against Women are an average of 5,000 words. The Committee against Torture adheres to a word limit of 5,000 words for its concluding observations. The Committee on the Rights of the Child is in the process of reducing the length of its concluding observations, which currently average from 9,000 to 10,000 words.

E. Targeted recommendations in the concluding observations

22. At its twenty-third meeting, the chairpersons endorsed the recommendation that concluding observations be specific and targeted (A/66/175, annex II, para. 29). That call was echoed by the High Commissioner for Human Rights, who recommended that concluding observations should avoid recommendations of a general nature and give concrete recommendations on the steps needed for implementing a treaty (A/66/860, sect. 4.2.6). She also suggested that recommendations that called for required structural changes, such as amendments to national legislation, be systematically included in concluding observations. She further recommended that all concluding observations specify the articles of the treaty requiring action by a State party and that recommendations of a programmatic nature or requiring positive steps by a State party include suggested indicators for measuring achievement.

23. All treaty bodies strive to formulate specific and concrete recommendations as much as possible. Six treaty bodies (the Human Rights Committee, the Committee on Economic, Social and Cultural Rights, the Committee on the Elimination of Racial Discrimination, the Committee against Torture, the Committee on the Rights of the Child and the Committee on the Rights of Persons with Disabilities) specify the articles of the treaty requiring action by a State party. There is no fixed practice or guidelines on the other elements listed above. On the development and application of possible indicators for measuring achievement, discussions have suggested that there is, as yet, no consensus for such indicators. Treaty bodies may also wish to consider using specific time-bound targets for measures relating to the implementation of their recommendations in the interim.

F. Format for concluding observations

24. At its twenty-third meeting, the chairpersons supported the encouragement of all treaty bodies to include subject headings in their concluding observations (A/66/175, annex II, para. 26). It further endorsed the recommendation to use a clear format, with subject headings, in which: each paragraph addressed no more than three issues; the concern was

expressed in a maximum of three sentences; the recommendation consisted of an introductory sentence, if applicable, and up to three recommendations matching the order of the concerns, organized in sequentially lettered subparagraphs; and the recommendation could refer to relevant provisions of the treaty as well as to general comments/recommendations.

25. Of the nine treaty bodies that issue concluding observations, seven already use subject headings (the Human Rights Committee, the Committee on the Elimination of Discrimination against Women, the Committee on the Elimination of Racial Discrimination, the Committee against Torture, the Committee on the Rights of the Child, the Committee on Migrant Workers and the Committee on the Rights of Persons with Disabilities). Seven treaty bodies (the Human Rights Committee, the Committee on the Elimination of Discrimination against Women, the Committee on Economic, Social and Cultural Rights, the Committee on the Elimination of Racial Discrimination, the Committee against Torture, the Committee on the Rights of the Child and the Committee on the Rights of Persons with Disabilities) currently make specific reference to relevant treaty provisions and/or general comments in their recommendations. Treaty bodies do not yet consistently apply the other format elements listed above.

G. Cross-referencing of other treaty bodies and human rights mechanisms

26. At their twenty-third meeting, the chairpersons endorsed the call for treaty bodies to use cross references to and repeat the recommendations of other treaty bodies and special procedures mandate holders, where appropriate (ibid., annex II, para. 31). The High Commissioner recommended that treaty bodies also consider cross-referencing recommendations of the universal periodic review (A/66/860, sect. 4.2.6).

27. Three treaty bodies (the Committee on the Rights of the Child, the Committee on Migrant Workers and the Committee on Enforced Disappearances) cross-reference other treaty bodies and human rights mechanisms. The other treaty bodies (the Human Rights Committee, the Committee on the Elimination of Racial Discrimination, the Committee on Economic, Social and Cultural Rights, the Committee on the Elimination of Discrimination against Women, the Committee against Torture and the Committee on the Rights of Persons with Disabilities) practice cross-referencing to varying degrees and in an ad hoc manner. In practical terms, cross-referencing results in a longer text, so sometimes the decision with regard to this practice might be taken for technical reasons.

H. Use of standard paragraphs in concluding observations

28. At their twenty-third meeting, the chairpersons also endorsed the invitation to individual treaty bodies to discuss whether all standard paragraphs should be maintained or whether their use should be restricted to a specific country context, in cases deemed to be relevant and applicable (A/66/175, annex II, para. 28).

29. All treaty bodies use standard paragraphs sparingly. When used, such standard paragraphs are adapted to the specific circumstances of the State party as necessary. In some instances, standard paragraphs might be used by treaty bodies to ensure consistency among the various State party reviews.

I. Section on factors and difficulties affecting treaty implementation

30. At its twenty-third meeting, the chairpersons endorsed the call for caution on the continued inclusion of a section on factors and difficulties affecting treaty implementation (ibid., para. 30).

31. Six of the nine treaty bodies (the Human Rights Committee, the Committee on Economic, Social and Cultural Rights, the Committee on the Elimination of Racial Discrimination, the Committee against Torture, the Committee on the Rights of Persons with Disabilities and the Committee on Enforced Disappearances) have eliminated from their concluding observations the section on factors and difficulties affecting the implementation of the treaty. The remaining three treaty bodies (Committee on the Elimination of Discrimination against Women, the Committee on the Rights of the Child and the Committee on Migrant Workers) include such a section only on an exceptional basis. The Committee on the Elimination of Discrimination against Women sometimes uses the title "implementation of the Convention" rather than "factors and difficulties".

IV. Suggested elements for consideration by the chairpersons

32. **The adoption of short, focused and concrete concluding observations, as recommended by the General Assembly in its resolution 68/268, presents a number of clear benefits. It would allow States parties to use concluding observations as a tool for guiding concrete legislative, policy, programmatic and institutional improvements. It would also facilitate the national implementation of treaty body recommendations by States parties and support follow-up by national human rights institutions. Furthermore, the use of a clear format and the inclusion of subject headings would facilitate the indexing of treaty body recommendations, and would be conducive to more effective implementation and follow-up by the responsible State entities. The utility of treaty body recommendations for other human rights mechanisms, including special procedures and the universal periodic review, would also be enhanced through such improvements to the concluding observations. Overall, that would significantly increase the standing and visibility of individual treaty bodies and the treaty body system as a whole.**

33. **Based on existing good practices, the chairpersons could consider endorsing the following common guidelines on concluding observations and recommend them for implementation by their respective treaty bodies:**

(a) Use clear, treaty-specific subject headings which are thematically clustered while referring to the corresponding articles;

(b) Limit concluding observations on periodic reports to 3,300 words;

(c) Request the country rapporteur to prioritize recommendations, with a pragmatic view of the capacity of States parties to meaningfully implement measures within a given reporting cycle, by taking into account:

(i) The extent of the implementation by the State party of previous concluding observations;

(ii) The need to balance immediate and longer term priorities, both in terms of urgency and the feasibility of implementation;

(iii) The simplified reporting procedure and the constructive dialogue as the basis for identifying recommendations;

(d) Formulate recommendations that provide specific guidance on country-specific measures required for implementing treaty obligations, including by:

(i) Systematically including guidance on any legislative or structural changes required by the State party;

(ii) Specifying the relevant articles of the respective treaty;

(iii) Suggesting, wherever possible, indicators for measuring State party implementation of the specific treaty provision or, as a minimum, time-bound targets when relevant;

(e) Cross-reference relevant recommendations of other human rights treaty bodies and mechanisms with a view to strengthening the complementarity of human rights mechanisms;

(f) Limit the use of standard paragraphs to specific instances in which they are required for ensuring the consistency of jurisprudence and/or equal treatment of States parties only and ensure that they are country-specific when used;

(g) Abolish, other than for exceptional circumstances based on pre-determined criteria, the inclusion of a section on factors and difficulties.

34. **In accordance with the double parameters of the Poznan formula, reflected in General Assembly resolution 68/268, the chairpersons could also endorse the draft aligned format for concluding observations contained in the annex to the present note by the secretariat, and recommend it for implementation by all treaty bodies.**

Annex

Draft aligned format for concluding observations

A. Introduction

Paragraph setting out the dialogue, when the Committee considered the report of the State party (dates and meetings) and when the Committee adopted the concluding observations.

Short paragraph welcoming the report/written replies (as relevant), noting its due date and referring to the delegation, the tone of the dialogue and/or any other introductory matters.

B. Positive aspects

Paragraphs setting out positive legislative, administrative, programmatic or institutional matters that the State party has taken over the reporting period (including ratifications, where appropriate).

Positive aspects should also indicate the previous recommendations of the Committee that have been successfully implemented.

C. Principal matters of concern and recommendations, including follow-up to previous concluding observations

Concerns and recommendations should be clustered under subheadings.

Concerns and recommendations should reflect the information in the report and replies to lists of issues as well as questions and issues raised in the dialogue.

Concerns should be stated succinctly and followed by recommendations in bold.

The recommendation should not repeat information already included in the concern.

The concern and/or the recommendation should reference previous recommendations of the Committee as appropriate (i.e., where the previous recommendation was only partially implemented or not implemented at all).

Committees are encouraged to refer to relevant recommendations of other treaty bodies covering the same issue, as appropriate.

Recommendations should indicate time frames where possible, for example, identifying measures to be implemented in the short and long term, where appropriate.

Recommendations could prioritize actions where relevant, for example, identifying measures (short or long term) to which the State party should pay particular attention.

Not every concern requires a recommendation; the Committee should endeavour to set out only those recommendations which the State party will be able to demonstrate, at the next dialogue, that it has implemented.

D. Follow-up and dissemination

The Committee identifies those recommendations subject to the follow-up procedure (where such a procedure exists).

The Committee recommends that the State party take all appropriate measures to ensure that the present recommendations are fully implemented by, inter alia, transmitting them to all concerned, namely, ministers and/or ministries, Parliament, the judiciary and local authorities, for appropriate consideration and further action.

The Committee requests the State party to report on steps taken in implementation as part of the follow-up procedure (where such a procedure exists).

The Committee establishes the due date for the next report.